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Supreme Court of the United States

October Term, 1963.

No. 1110

PAN AMERICAN LIFE INSURANCE COMPANY,
Petitioner,

versus

CARLOS MANUEL THEYE y AJURIA,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF LOUISIANA.

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Petitioner prays that a writ of certiorari issue to review the judgment of the Supreme Court of Louisiana. This judgment affirms a summary final decree for Respondent and holds that certain laws of the Republic of Cuba are not binding on Cuban citizens.

OPINIONS BELOW.

The opinion of the Supreme Court of Louisiana is reported at 161 So. (2) 70 and is attached hereto as Appendix A.

JURISDICTION.

Jurisdiction of this Court is invoked under 28 U. S. C. Sec. 1257 (3). The decision of the Supreme Court of Louisiana did not become final until 15 days after rendition, that is, on March 10, 1964.

QUESTION PRESENTED.

Prior to 1960, Petitioner, Pan American Life Insurance Company doing business in Cuba, issued a life insurance policy to Respondent, a Cuban citizen, living in Cuba. In 1960, the recognized government of the Republic of Cuba enacted certain laws which expropriated Petitioner's Cuban assets and substituted the Cuban State as the obligor on Petitioner's insurance policies issued to Cuban citizens. Thereafter, Respondent sued Petitioner in the Louisiana courts, contending that Petitioner was still the obligor on the policy it had issued to him. Under these circumstances did the Louisiana courts err in refusing to recognize and apply the Cuban law even though Respondent was and is a Cuban citizen, and Petitioner's reserves on Respondent's policy were, in fact, expropriated by the Cuban State?

CUBAN LAWS INVOLVED.

On July 6, 1960, the Republic of Cuba promulgated Law No. 851 (R. 12). Pursuant to this Law, Resolution No. 3 was promulgated on or about October 24, 1960 (R. 12). This Resolution provides in pertinent part:

> "WHEREAS, the Imperialist interests whose representatives control the Government of the

United States of North America, in their intention to utilize every means which they consider effective to impede the consolidation of the Cuban Revolution, have continued committing aggressions, every day more unscrupulous and criminal, against the economy of the nation.

WHEREAS: Among the multiple measures adopted by the Government of the United States of North America, there stands out for its exceptional aggressiveness that of the general embargo on exportations from that country to Cuba with the intention of strangling our economy.

WHEREAS: That measure in addition to violating the most elemental standards of international existence, constitutes an act of political coercion with which it pretends uselessly to weaken the popular force of the Cuban Revolution by creating difficulties for national supplies.

WHEREAS: It is evident that this conduct of the Government of the United States of North America reveals the desperation and impotence of imperialism conducted by that Government, each day with more virulence, to employ the most unjust aggressions against our country.

WHEREAS: It is the duty of the Revolutionary Government to defend the economy of the country.

WHEREAS: Moreover, it is fundamental for the liberation and economic development of our country that the North American commercial and industrial firms be liquidated which presently constitute the

remainder in our country of the financial capital of that country.

THEREFORE: In use of the powers with which we are vested, in accordance with the provisions of No. 31 of June (sic July), 1960.

RESOLVED

FIRST: There is declared the nationalization by means of forced expropriation, and, consequently, there are adjudged in favor of the Cuban State in full dominium all the properties and firms located in the National Territory and the rights and actions resulting from the exploitation of these properties and concerns which are the property of natural and juridical persons, nationals of the United States of America or operators of firms in which nationals of that country have a predominant interest, as follows:

* * * *

Group XX—Insurance Companies
Pan-American Life Insurance Co.

* * * * *

SECOND: Therefore, the Cuban state is declared subrogated in place and grade of the natural and juridical persons referred to in the preceding section with respect to the properties, rights and rights of action mentioned, as well as the assets and liabilities constituting the capital of the concerns referred to.

"THIRD: It is declared that these forced expropriations are effected for reasons of necessity and public use and national interest mentioned in the Whereas clauses of this Resolution."

STATEMENT OF THE CASE.

The facts are stated as follows in the Supreme Court of Louisiana's decision below:

> "Carlos Manuel Theye Y Ajuria, a Cuban national now residing in Florida,[1] instituted proceedings in the district court in Orleans Parish against Pan American Life Insurance Company, a Louisiana corporation, to recover the cash surrender value of an insurance policy issued by the defendant on the life of the plaintiff, which under the terms of the contract, had been converted into a fully paid-up policy in June, 1942. He also prayed for 'penalties and attorneys' fees.
>
> In answer to the plaintiff's petition, the defendant (1) denied the policy was a Louisiana contract and governed by the laws of this state, insisting that the policy was in fact delivered to him by its agent in Cuba whose laws govern the performance thereof; and maintained (2) that even if the original contract had been consummated in Louisiana, its situs had been removed to Cuba by the actions of the parties, the defendant having paid and the plaintiff having received the persistency bonus in 1948 in Cuban pesos, and the plaintiff having made and repaid in pesos three

[1] Plaintiff had lived in Cuba until November, 1960, when he was forced to flee after Castro came to power because of his political beliefs.

loans on the policy in 1948, 1950, and 1952; and (3) under our "Act of State" doctrine and certain provisions of the International Monetary Fund, commonly known as the Bretton Woods Agreement, a treaty to which Cuba and the United States are signatories, the laws of Cuba passed since the execution of the policy involved herein govern.

Whereupon, the plaintiff filed a motion for a summary judgment on the pleadings, exhibits, interrogatories and defendant's response thereto; the motion was granted and the trial judge awarded the plaintiff the sum of $7,090 as the cash surrender value of the policy. This judgment was reversed by the Court of Appeal, Fourth Circuit, dismissing plaintiff's suit, 154 So. 2d 450. The matter is now before us for review on a writ of certiorari granted on the application of the plaintiff.

The record reveals that on May 14, 1928, when plaintiff was thirty-one years of age, he applied for a life insurance policy through the defendant's

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In 1948 the Batista government passed Law No. 13 which provided for the creation of the National Bank of Cuba and also that after 1951 only the Cuban pesos would be recognized as legal tender. The Monetary Law of 1951 required all contracts payable to or by Cuban nationals be paid in pesos and after Castro's rise to power, on September 29, 1960, Law 568 was promulgated, prohibiting foreign corporations doing business in Cuba from making payments or crediting the accounts of Cuban nationals with any sums available to them except in Cuba, without the express authorization of the National Bank of Cuba. In June, 1960, Law No. 851 was adopted, providing for the nationalization through expropriation of all property in Cuba owned by United States nationals and pursuant to Resolution Number 3, passed October 26, 1960, defendant's operations were expropriated and an administrator appointed by the Cuban government was placed in charge thereof.

agent in Havana, to which was attached payment of the first annual premium. In due time the application was received and accepted by the defendant in its home office in New Orleans; the policy was issued on May 2, 1928, and mailed to its said agent in Cuba to be delivered to the plaintiff. All other annual premiums were also paid in United States currency until 1942 when the policy was converted into a paid-up one.

It is stipulated in the policy, a copy of which was attached to the plaintiff's petition, that all premiums are payable in advance at the home office of the defendant and upon presentation of the policy, it would * * * pay at its Home Office in New Orleans, Louisiana, U.S.A.; and upon presentation of due proof of the death * * * of the insured, the proceeds of the policy to the beneficiary.

The trial judge in his reasons for judgment stated that the obligation under the contract at the time it was issued and at the time it was converted was governed by the laws of the state of Louisiana and the laws and decrees of the Republic of Cuba passed subsequent to these events could have no effect on the obligation that existed previously. In reversing the judgment of the district court, the Court of Appeal was of the opinion that the Bretton Woods Agreement prohibited this country from enforcing contracts which would frustrate exchange control regulations of another member of the Agreement, and that the Cuban law requiring that payments between the insured and the insurer be made in Cuba in pesos was applicable to the policy under consideration, consequently the plaintiff was not entitled to recover the cash

surrender value of the policy from the defendant in any of the United States."

In affirming the judgment of the trial judge, the Supreme Court of Louisiana reasoned, in part, as follows:

"A study and analysis of the policy and exhibits contained in the record leave no room for speculation as to the intention of the parties which was stated in clear and unambiguous language; the plaintiff obligated himself to pay all premiums due on the policy at the home office of the defendant; and after the policy was converted into a fully paid-up one, it was the obligation of the defendant company to pay to the plaintiff the cash surrender value thereof upon his surrender of the policy at its office in New Orleans; all transactions were obviously intended to be negotiated in American dollars."

* * * *

"We think, therefore, the trial judge properly concluded that the laws and decrees of the Republic of Cuba passed subsequent to the date the policy became a paid-up policy can have no effect upon the obligation which existed at that time."

Citing as authority, among other cases, *Menendez Rodriguez vs. Pan American Life Insurance Co.*, 5 Cir., 311 F. 2nd 429, 432, and *Menendez vs. Aetna Insurance Company*, 5 Cir., 311 F. 2nd 437 in which cases this Court (Cases Nos. 67 and 68, October Term, 1963) vacated the judgments of the United States Court of Appeal, Fifth Circuit, and remanded the cases for

further consideration in the light of *Banco Nacional de Cuba vs. Sabbatino*, No. 16, October Term, 1963, 84 Sup. Ct. 923, 11 L.ed. 2nd 804.

In spite of the fact that this Court had under consideration the "Act of State" doctrine growing out of the acts of the Castro government of Cuba in *Banco Nacional de Cuba vs. Sabbatino*, 84 S. Ct. 923, 11 L.ed. 2nd 804, argued to this Court on or about October 23, 1963, the Court below concluded its opinion saying:

> "We find untenable the suggestion of counsel that this court should await the United States Supreme Court's action in regard to several cases pending before it on applications for writs, and wherein the applicability of the 'Act of State' doctrine in controversies similar to the case at bar is involved, and would, therefore, be controlling, before we resolve this matter. To require this refugee, who is in a strange land and possibly in dire need, to wait indefinitely for a final adjudication of his claim would be a travesty on justice; and we think it would be folly to suggest that he return to Cuba, for his effort to secure relief there might well wind up in *his* liquidation."

As shown by the above quoted excerpt from the opinion below, the question here presented was both timely raised and actually decided by the Louisiana Supreme Court.

REASONS FOR GRANTING THE WRIT

Petitioner urges the Court to grant this petition for a writ of certiorari to the Supreme Court of Louisiana for the following reasons:

1. This case is equally as important in the field of international law as the *Sabbatino* case in which this Court granted certiorari and enforced the "Act of State" doctrine, or the cases of *Menendez Rodriguez vs. Pan American Life Insurance Company* and *Menendez vs. Aetna Insurance Company*, Nos. 67 and 68 respectively, decided on April 6, 1964 in which writs of certiorari were granted and the judgments of the U. S. Court of Appeals for the Fifth Circuit were vacated and the causes remanded for further consideration in the light of *Banco Nacional de Cuba vs. Sabbatino*, 84 S. Ct. 923, 11 L.ed. 2nd 804.

As in those cases, this case too involves the effect of Cuban expropriation of American companies and their outstanding liabilities to Cuban Nationals suing in the United States.

Pan American Life alone has outstanding more than 6,000 policies issued through its Havana Branch. It is not possible to know how many such policy holders are among the hundreds of thousands of Cubans now resident in the United States. However many are known to be in this country and many suits have been filed by them in the courts of the several states as well as in the United States District Courts.

Suits against other American life insurance companies in the same position as Petitioner are now pending in Miami, Jacksonville, Galveston, Shreveport, Raleigh, Newark, Houma, Louisiana, and San Juan.

It is rumored that hundreds of such suits are about to be filed in the Miami and New York areas and

such claims are being actively solicited by former Cuban lawyers through newspaper advertisements in Spanish-language newspapers in Miami and San Juan.

The pending suits involve all kinds of policy claims, including death claims, suits for cash surrender values of policies, annuity benefits and endowment proceeds, as well as actions to force insurers to accept premiums and maintain policies in force.

2. The decision of the Louisiana Supreme Court is in direct conflict with this Court's holding in *Banco Nacional de Cuba vs. Sabbatino*, 84 S. Ct. 923, 11 L.ed. 2nd 804; *Pan American Life Insurance Company vs. Menendez Rodriguez*, No. 67, October term, 1963 and *Aetna Insurance Company vs. Menendez*, No. 68, October term, 1963, both decided on April 6, 1964.

The decision of these federal questions should be uniform throughout the country and the only way such uniformity can be achieved is by a decision of this Court.

3. Pan American Life Insurance Company also has pending in this Court a petition for certiorari in the cases of *Pan American Life Insurance Company vs. Augustin Goytisolo Recio*, No. 673, October term, 1963 in which the identical questions here presented are involved, as well as the case of *Pan American Life Insurance Company vs. Marie Lorido*, No. 379-380, October term, 1963 where only a slightly different factual situation was involved.

Grant of certiorari here would enable this Court to settle almost all if not quite every facet of the international problem created by the Cuban expropriation.

CONCLUSION.

ectfully submitted that this petition for a
iorari be granted.

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CERTIFICATE.

certify that copies of the above and foregoing
been served on opposing counsel this
y, 1964.